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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Beck's Spray Service, Inc.

File: B-299816

Date: August 9, 2007

Gregory M. Beck for the protester.

Gregory C. Cox, for United Agri Products, an intervenor.

Sherry Kinland Kaswell, Esq., and Alton E. Woods, Esq., Department of the Interior, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation gave offerors discretion in choosing equipment for aerial application of herbicide, agency reasonably downgraded protester's proposal for failure to propose aircraft deemed appropriate for project sites with rough terrain and eliminated it from the competitive range.

DECISION

Beck's Spray Service, Inc. protests the award of a contract to UAP under request for proposals (RFP) No. NAR070059, issued by the Department of the Interior, Bureau of Land Management (BLM), for aerial spraying of herbicide. Beck's challenges the evaluation of its proposal and the source selection.

We deny the protest.

The RFP contemplated the award of an indefinite-delivery/indefinite-quantity contract for a base year, with 2 option years. The successful offeror was to provide all labor, transportation, tools, and necessary equipment for aerial spraying of contractor-furnished herbicide on an estimated 5,000 acres of BLM lands. Proposals were required to address all RFP requirements and to include all information specifically required by each RFP section. Award was to be made on a "best value" basis, with proposals evaluated under two non-price factors--technical capabilities (50 points) and past performance (50 points)--and price, with the non-price factors considered more important than price.

Two firms, Beck's and UAP, submitted proposals, which were evaluated by a technical proposal evaluation committee (TPEC). The TPEC assigned Beck's proposal only 20 of the possible 100 points, the deductions being due to a finding that the proposal did not include adequate technical and past performance information; in particular, the agency found that the proposal failed to adequately address Beck's familiarity with the type of terrain, as evidenced by its proposal to use only fixed-wing aircraft. UAP's proposal received 90 points based on a finding that its proposed team was exceptionally skilled and experienced; that UAP was familiar with the spray area's conditions and rugged terrain; and based on the firm's submission of information on quality assurance and safety. UAP's price was approximately 20 percent higher than Beck's, but was lower than the government's estimate, and the agency found that it was reasonable. The contracting officer, as source selection authority (SSA), determined that Beck's evaluation score was so low that its proposal could not be considered within the competitive range, and concluded that UAP's proposal represented the best value to the government. After a debriefing, Beck's filed this protest.

Beck's asserts that the evaluation of its proposal was flawed under the technical capability and past performance factors. In considering a protest of an agency's proposal evaluation, our review is confined to determining whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11. The evaluation here was unobjectionable.

TECHNICAL CAPABILITY

Beck's asserts that the evaluation of its proposal under the technical capability factor was flawed primarily because the agency improperly downgraded its proposal for failing to offer rotary-wing aircraft (helicopters) for performance of the contract. In Beck's view, this represented an undisclosed evaluation consideration.

This argument is without merit. The agency explains that Beck's proposal was downgraded--it received 10 of the 50 available points--for a number of weaknesses, only one of which was its failure to propose any use of helicopters. In this regard, the RFP notified offerors that some of the project sites were in very rugged terrain with deep drainages and steep slopes, RFP § C.1.4.1, and called for offerors to inspect the sites prior to submitting proposals. RFP § L, ¶ 52.237-1. The agency explains that its policy is not to specify the type of aircraft to be used, and the RFP clearly provided that the tools and equipment used for application of herbicides was at the contractor's discretion. RFP § C.5.1.2. The agency considered fixed-wing aircraft appropriate for some of the applications here, but believed that helicopters would be better suited to others. Beck's maintains that it can accomplish all of the work with fixed-wing aircraft, and that it thus was improper to downgrade its proposal for this reason. However, Beck's brief technical proposal--a cover letter and list of references--did not address in any detail the firm's experience or ability to

make fixed-wing applications over all types of terrain to be encountered under the contract.

Further, as noted by the agency, Beck's proposal was downgraded for a variety of weaknesses--not just the failure to propose the use of helicopters--including its overall lack of detailed information. The RFP required offerors to provide evidence of their ability to perform the project, cautioning them that sufficient information had to be presented to enable the agency to evaluate the firms' qualifications. RFP §§ L.1.1, L.1.2. In this regard, it called for offerors to submit resumes that included a narrative description of the offeror's noxious weed control background, experience and performance on its three most recent jobs, and related work experience. RFP § L.2.3. While Beck's proposal identified, for example, experience with various noxious weeds, it included no resumes or other narrative describing Beck's noxious weed control background. Likewise, while the proposal stated that Beck's pilot was qualified to read maps, and proposed to use the global positioning system (GPS)--as required by RFP § C.3.6--it included no information explaining how its GPS would translate ground information or who would operate it.

We find nothing unreasonable in the agency's conclusion that applications by helicopter may be necessary under the contract--and its downgrading of Beck's proposal accordingly. Likewise, since Beck's did not address other areas of the RFP in its limited proposal, there is no basis for us to object to the agency's downgrading the proposal on that basis under the technical capabilities factor.¹ An offeror has the burden of submitting an adequately written proposal and runs the risk that its proposal will be evaluated unfavorably where it fails to do so. Carlson Wagonlit Travel, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 3, 6.

In fact, here, the agency eliminated Beck's proposal from the competitive range. Agency Report, Tab 10, Negotiation Memorandum. Contracting agencies are not required to retain a proposal in a competitive range where the agency reasonably concludes that the proposal has no realistic prospect of award. Federal Acquisition Regulation § 15.306(c)(1); SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5-6. As discussed above, the evaluators found deficiencies and inadequacies in Beck's brief technical proposal. In our view, based on this

¹ Our conclusion is not changed by the fact that one of the evaluators incorrectly noted that Beck's proposal did not list any license information. While Beck's asserts that this could have impacted its technical score, we find no evidence that it did so. In this regard, this weakness is identified only on the evaluator's own worksheet; it was not listed on the consensus evaluation, the TPEC award recommendation, or the source selection document. Moreover, the evaluator states that removal of this weakness from his worksheet would not change the final scoring of Beck's proposal. Natural Resource Specialist Declaration ¶ 6.

evaluation, the agency reasonably concluded that the protester had no realistic possibility of receiving the award.

PAST PERFORMANCE

Offerors were required to submit past performance reference information on comparable contracts that they had completed, including the name of the contract, the issuing entity or agency, contact information, and dates of performance. RFP § L.2.4. Based on this information, the TPEC was to determine whether the references and reputation of the company showed the quality of work necessary to successfully complete the contract and whether task orders were completed within performance times. RFP § M.2.2. Beck's asserts that the agency improperly failed to contact its submitted references in evaluating its past performance, and disputes the accuracy of the informal information relied upon instead by two of the evaluators.

We need not reach this issue since, even if we agreed that the past performance evaluation was flawed, it does not appear that Beck's was prejudiced. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3 (GAO will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions); see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). In light of Beck's low technical capabilities score, and significant deficiencies, the record shows that any improvement in its past performance rating would not have affected the agency's competitive range determination. In this regard, even if Beck's received all 50 points for past performance, its technical capability score would remain 40 points lower than UAP's and its combined score 30 points lower.

The protest is denied.

Gary L. Kepplinger
General Counsel